

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK**

**DR. A., NURSE A., DR. C., NURSE D., DR. F., )  
DR. G, THERAPIST I., DR. J., NURSE J., DR. )  
M., NURSE N., DR. O., DR. P., )  
TECHNOLOGIST P., DR. S., NURSE S. and )  
PHYSICIAN LIAISON X., )**

Plaintiffs,

v.

**KATHY HOCHUL**, Governor of the State of New  
York, in her official capacity; **HOWARD A.  
ZUCKER**, Commissioner of the New York State  
Department of Health, in his official capacity; and  
**LETITIA JAMES**, Attorney General of the State of  
New York, in her official capacity,

Defendants.

Case No. 1:21-cv-01009

**Order to Show Cause**

**UNSWORN DECLARATION OF  
MICHAEL G. MCHALE, ESQ**

Pursuant to LR 7.1(a)(2) and Fed. R. Civ. P. Rule 65, I, Michael G. McHale, declare and state as follows:

1. I am counsel for the above-listed Plaintiffs in the above-captioned case.
2. Pursuant to Fed. R. Civ. P. 65(a)(1), I have provided notice to all adverse parties of all filings in the above-captioned case seeking a temporary restraining order and preliminary injunction against Defendants' unconstitutional and illegal Vaccine mandate eliminating any ability to seek or retain religious exemptions.
3. As a preliminary matter, on September 6, 2021, my co-counsel Christopher A. Ferrara emailed Defendants a Demand Letter (attached as Exhibit A) requesting that Defendants

immediately cease and desist from enforcing the Department of Health's "Vaccine Mandate" eliminating any availability to seek religious exemptions. Mr. Ferrara demanded a favorable response by the close of business September 7, 2021, and instructed that otherwise the Thomas More Society would pursue emergency federal-court litigation against the Vaccine Mandate on behalf of numerous health care professionals across the State of New York. Defendants failed to respond by the requested deadline or anytime thereafter.

3. Further, immediately after filing the above-captioned case and moving papers on September 13, 2021, I gave notice to defendants by emailing copies of the following documents: the Verified Complaint, Exhibits A through F of the Verified Complaint, my Declaration authenticating the Exhibits, Motion for Temporary Restraining Order and Preliminary Injunction, Memorandum of Law in Support of the Motion, and a proposed Order to Show Cause.

4. I emailed all of the aforesaid documents to Defendant Governor Kathy Hochul and Defendant Attorney General Letitia James to the following email address: [civil.rights@ag.ny.gov](mailto:civil.rights@ag.ny.gov), and to [Adrienne.Kerwin@ag.ny.gov](mailto:Adrienne.Kerwin@ag.ny.gov) to be forwarded to whomever will be assigned to this case.

5. I emailed all of the aforesaid documents to Defendant Health Commissioner Howard Zucker at the following email address: [dohweb@health.ny.gov](mailto:dohweb@health.ny.gov).

6. This declaration is intended to comply with Fed. R. Civ. P. 65(a)(1), LR 5.1(a), and LR 7.1(a)(2) ensuring that Plaintiffs' counsel has made good faith efforts to provide notice to defendants of this TRO application by providing them with the documents he filed with this Court.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2020.

A handwritten signature in black ink, appearing to read "Michael Mchale". The signature is fluid and cursive, with the first name "Michael" and last name "Mchale" clearly distinguishable.

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MICHAEL G. MCHALE

Bar. No. 701887

*Counsel for Plaintiffs*

# THOMAS MORE SOCIETY

A National Not-for-Profit Public Interest Law Firm

September 6, 2021

Letitia James  
Office of the Attorney General  
State of New York  
28 Liberty Street  
New York, NY 10005  
Email: [civil.rights@ag.ny.gov](mailto:civil.rights@ag.ny.gov)

Howard A. Zucker  
Commissioner  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237  
Email: [dohweb@health.ny.gov](mailto:dohweb@health.ny.gov)

Re: **DEMAND LETTER REQUESTING THAT YOU IMMEDIATELY CEASE  
AND DESIST FROM ENFORCING ATTEMPTED REMOVAL  
RELIGIOUS EXEMPTIONS FROM COVID-19 VACCINE MANDATE  
FOR HEALTHCARE WORKERS; RESPONSE REQUESTED BY  
SEPTEMBER 7, 2021**

Dear Attorney General James and Commissioner Zucker:

The Thomas More Society is a national public interest law firm that defends clients across the country in matters of religious liberty. Last year we obtained the first federal court injunction against Governor Cuomo and Mayor DeBlasio's unconstitutional gathering-size limits on houses of worship. *See Soos v. Cuomo*, 1:20-cv-651 (June 26, 2020). And the undersigned attorney achieved the first injunction against California's similar regulations in *Burfitt v. Newsom*, Kern Cnty, No. BCV-20-102267 (Cal. Super. 2020).

This letter is to notify you that the Thomas More Society is preparing a new lawsuit against yet another unconstitutional New York regulation being imposed in the name of COVID-19: this time an order by the New York Department of Health eliminating the ability of healthcare workers to seek religious accommodations from a state-imposed COVID-19 vaccine mandate for healthcare workers—*notwithstanding the supervening requirements of Title VII of the Civil Rights Act* requiring that covered healthcare employers consider requests for such accommodations, as well as both the New York State and New York City Human Rights Law (the "Vaccine Mandate"). We represent numerous clients across the healthcare industry in New York who are prepared to immediately pursue their rights in federal court.

**Please be advised that we join with Liberty Counsel respecting their demand that by Tuesday, September 7 you rescind or agree not to enforce the Vaccine Mandate's ban on religious exemptions.** We have reviewed that letter and agree with its legal analysis, and we incorporate that analysis by reference here.

This letter is to notify you, as has Liberty Counsel, that the Thomas More Society is prepared to pursue emergency federal-court litigation on behalf of numerous healthcare professionals should the State of New York not *immediately rescind and/or refrain from enforcing* the New York Department of Health Order attempting to override the federal-law rights of healthcare workers across New York.

**As you have not, so far as we know, responded to Liberty Counsel's demand, be advised that we too will proceed with litigation unless the Vaccine Mandate is rescinded, or you agree not to enforce it, by close of business tomorrow, Tuesday, September 7th.**

Sincerely,

s/Christopher A. Ferrara

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Christopher A. Ferrara  
Special Counsel – Thomas More Society  
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Whitestone, New York 11357  
(718) 357-1040  
Fax (718) 357-4926  
[cferrara@thomasmoresociety.org](mailto:cferrara@thomasmoresociety.org)  
Counsel for Plaintiffs

cc: Michael McHale, Esq.  
Andrew Bath, Esq.

**P.S.** This letter is being served on Attorney General James both in her own capacity and in her capacity as counsel for the State, including the Governor in her official capacity.